Supreme Court, U.S.
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No. 05- 05-399

IN THE

Supreme Court of the United States

HARRY EDELSON,

Petitioner,

v.

CDC CORPORATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the Seventh Circuit err in rejecting the position of Petitioner Harry Edelson and the Securities and Exchange Commission (as *amicus curiae*), supported by the decisions of all other Circuit Courts of Appeal that considered the issue, that stockholders have a private right of action under § 13(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(d)) to sue for misrepresentations and inaccurate disclosures, under circumstances that do not involve either a tender offer or other stock accumulation that could affect corporate control?

PARTIES TO THE PROCEEDING

The parties to the proceeding before the Seventh Circuit Court of Appeals are the following:

Petitioner, Harry Edelson, an individual,

and

Respondent, CDC Corporation, formerly known as chinadotcom corporation, a Cayman Islands corporation with its principal place of business in Hong Kong.

In addition, the following persons were defendants in the District Court:

Raymond K.F. Ch'ien, an individual who is a citizen of Hong Kong;

Peter Yip Hak Yung, an individual who is a citizen of Hong Kong; and

Asia Pacific Online Ltd., a Cayman Islands corporation owned by the wife of Peter Yip Hak Yung and a trust for the benefit of his children.

All defendants other than CDC were dismissed from the case in the District Court.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Harry Edelson respectfully prays that a Writ of Certiorari issue to review an order of the United States Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

The decision of the Court of Appeals for the Seventh Circuit was filed on April 25, 2005, and is reported at 405 F.3d 620 (7th Cir. 2005). That opinion is attached as Appendix A hereto. The unreported opinion of the District Court, dated January 28, 2004, is attached as Appendix B.

STATEMENT OF JURISDICTION

Edelson's request for Rehearing and Suggestion of Rehearing En Banc was denied by the Seventh Circuit in an Order entered June 27, 2005. Appendix C at 50a-51a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The pertinent federal statute — § 13(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(d)), and the principal Securities and Exchange Commission ("SEC") regulations promulgated thereunder, are reproduced in Appendix D.

STATEMENT OF THE CASE

I. The District Court Proceedings

A. Edelson's § 13(d) Allegations

Edelson is a former director of defendant CDC Corporation ("CDC", formerly known as "chinadotcom corporation"). At all relevant times, Edelson was also a CDC stockholder.